

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: AL/72/18/CLE

LOCATION: Evergreens
Level Mare Lane
Fontwell

PROPOSAL: Lawful development certificate for the use of an annexe as an existing single family dwellinghouse.

DESCRIPTION OF APPLICATION

This application is for a Certificate of Lawfulness for the separate residential use of an annexe to Evergreens. The accommodation comprises of 2 bedrooms, lounge/dining room, kitchen, hallway, downstairs toilet, utility room and an upstairs bathroom.

DESCRIPTION OF SITE AND SURROUNDINGS

'Evergreens' is a large flat site, comprising of a large residential dwelling with gardens, located in the north eastern corner of the site and then paddocks at the southern end of the site. The annexe subject of this application is located in the north-west corner of the site set back from the road with a large garden area on the northern side.

The building itself is a dormer bungalow in brick and tiles. It has a satellite dish on one corner. There is a domestic shed in the garden area and a small patio area with a domestic BBQ. On the south side there is an area of concrete hardstanding part fenced from the rest of the Evergreen site. There is additional parking on a gravel area to the immediate east of this fence. In total, space for 6-7 cars. The boundary to Level Mare Lane is a 3-4m high evergreen hedge.

RELEVANT SITE HISTORY

AL/65/91	Outline Application for agricultural dwelling (Resubmission following AL/30/91)	ApproveConditionally 15-01-1992
AL/39/92	Approval of reserved matters following AL/65/91 for proposed agricultural dwelling	ApproveConditionally 14-08-1992
AL/57/93	Approval of reserved matters following AL/65/91 for proposed agricultural dwelling	Approve 11-08-1993
AL/50/00/	First floor extension (over existing garage) to provide two bedrooms and a shower room	ApproveConditionally 03-08-2000
AL/72/09/	Conversion of existing barn/garage to form games room	Refused 14-10-2009

AL/10/12/CLE	Application for a Lawful Development Certificate for an existing use - occupation by persons not employed in agriculture or forestry (non-compliance with condition 3 of application ref AL/65/91)	Approve 16-03-2012
AL/34/12/	Application for removal of condition 3 of previously approved planning application AL/65/91	Approve 28-06-2012

An application for the retention of a timber outbuilding in 1999, located further towards the south of the site describes the building subject of this application as a potting shed, used for seed preparation and office/reception area for the nursery. An application made in 2009 sought permission to convert this existing barn/garage building into a games room. This was refused for three different reasons in October 2009. At that time, the building was shown to only have a ground floor.

REPRESENTATIONS

Representations received:

No responses received.

Comments on Representations received:

Noted.

CONSULTATIONS

Consultations responses received:

ADC SOLICITOR

Original comments:

"1. I am asked to comment on whether the evidence submitted with the application for a Lawful Development Certificate in respect of an annexe at Evergreens, Level Mare Lane, Fontwell, PO20 3SA ("the Property") is sufficient to justify the granting of a Certificate of Lawful Development.

2. The Application, made on 19th June, 2018 claims that the Property has had an existing use as a single family dwelling and has done for a period of at least four years prior to the date of the application..

3. The evidence provided is:

a) Planning Statement by South Eastern Planning Services Limited setting out the details, namely:

i) that the Property was converted to a self-contained dwelling during 2012;

ii) that from 1st October 2013 the Property has been let on three successive Assured Shorthold Tenancies (1st October 2013 to present, with short intervals whilst it was re-let) to persons not connected with the occupants of Evergreens.

b) Statutory declaration by Ian John Stent (Applicant) who states:

i) he and wife have resided in Evergreens since 30th August 2005;

ii) during 2012 he converted a former brick and tile agricultural storage building to a two-bedroom self-contained dwelling, known as "The Annexe, Evergreens";

iii) he has let the Property on an Assured Shorthold Tenancy on three occasions since 1st October, 2013.

c) Copies of the three tenancies;

d) Aerial photographs from 2012 and 2013

4. The question for the Council to ask is whether this limited evidence is sufficient in that there is no evidence of the Property having a separate postal address, has a separate electricity, gas or other fuel supply and no evidence of the tenants being included on the electoral roll at the address of "The Annexe, Evergreens".

5. I am of the opinion that the information provided is the bare minimum and that the Council may wish to obtain additional information with regard to fuel, postal address and council tax."

Second comments:

- "1. The Applicant has provided leases dating back to 1st October 2013;
- 2, Has substantiated the leases back to December 2015; and
- 3. Declared that the previous tenant is deceased.

Therefore, it is reasonable, on the balance of probabilities, to accept the facts stated in the application as correct."

Comments on Consultation responses:

The Council has also sought evidence from its Council Tax and Electoral Roll officers. However, Council Tax had no record of the dwelling and Electoral Roll, although aware had only added it to the register in August 2018.

LEGISLATIVE BACKGROUND

Section 171B of the Town and Country Planning Act 1990 states:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."

Section 191 of the Act states:

(2) For the purposes of this Act uses and operations are lawful at any time-

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Section 192(2) of the Town and Country Planning Act 1990 states that:-

"If, on an application under this section, the local planning authority are provided with information

satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

Paragraph 006 (Reference ID: 17c-006-20140306) of the Planning Practice Guidance (PPG) states that:

"(a) Who is responsible for providing sufficient information to support an application?

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

Paragraph 009 (Reference ID: 17c-009-20140306) of the PPG states that:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented."

The relevant time period is 19 June 2014 to 19 June 2018 i.e. 4 years to the date of the application.

CONCLUSIONS

The application contains sufficient information to demonstrate that the 2 bedroom annexe has been in a continuous separate residential use for at least the last 4 years.

The evidence consists of the application form, a planning statement, a statutory declaration by the

applicant/owner of Evergreens, copies of tenancy agreements, aerial photographs from 2012 & 2013 and letters from the current & previous tenants. The evidence in its entirety covers the period October 2013 to the present day.

It is considered on the balance of probability that consent should be granted. It is therefore recommended that the certificate is granted in accordance with the following terms.

RECOMMENDATION

APPROVE

The Arun District Council hereby certify that on 19-06-18, the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the property had been in use as a private dwelling for a continuous period of 4 years and the period in which enforcement action can be taken, as set out in Section 171B of the Town and Country Planning Act 1990 (as amended), has expired.

FIRST SCHEDULE

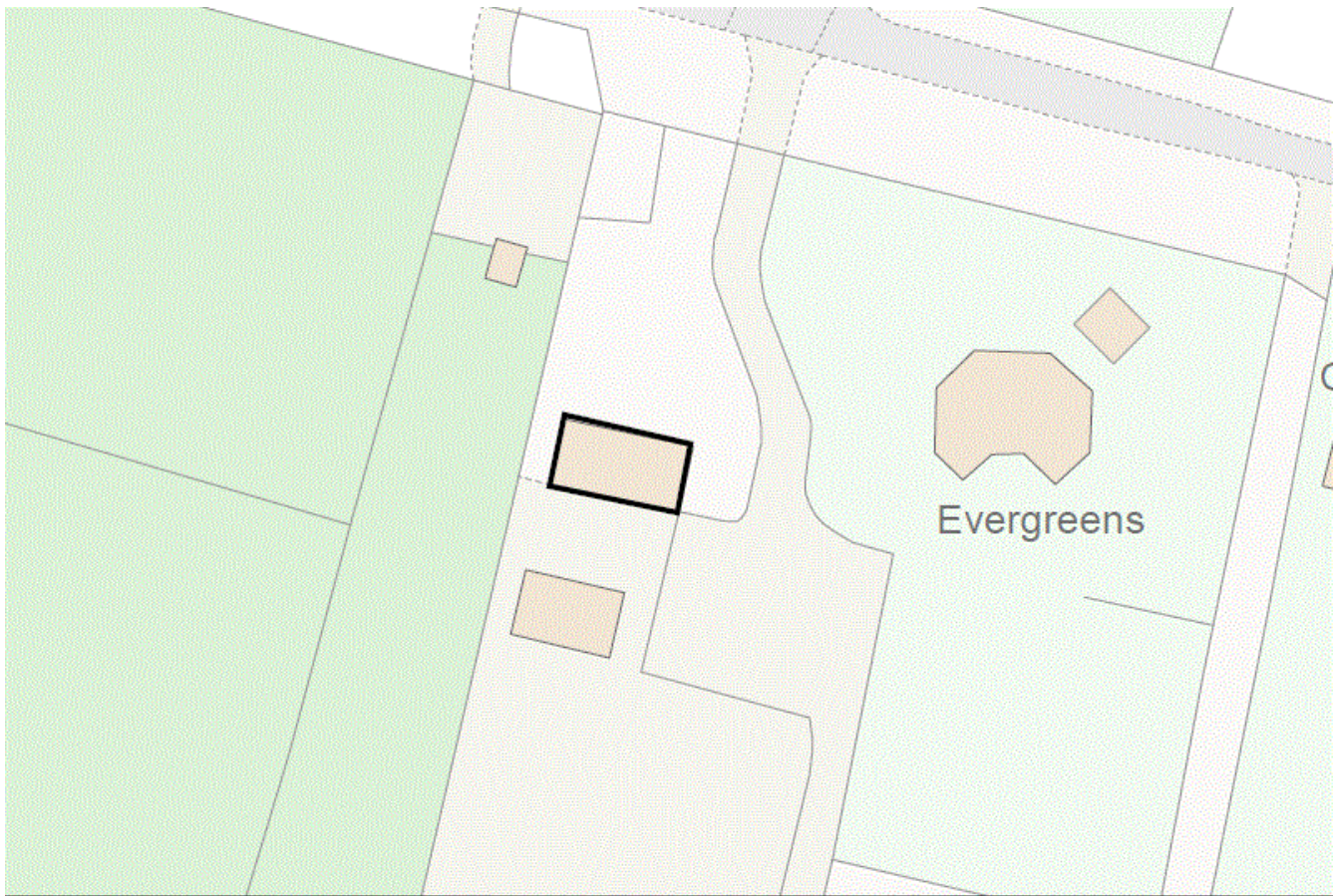
Use of the existing annexe as a separate self-contained 2 bedroom dwelling.

SECOND SCHEDULE

The Annexe, Evergreens, Level Mare Lane, Fontwell, PO20 3SA.

EXTENT OF USE

The extent of use is that defined on the submitted 1:1250 site plan and the submitted floor and elevations plans (4 plans in total) and relates to the use of this two storey annexe as a separate dwelling comprising of 2 bedrooms, lounge/dining room, kitchen, hallway, downstairs toilet, utility room and upstairs bathroom.



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